
To: Members of The House Judiciary Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: February 10, 2022

Subject: House Bill 459:
Juvenile Justice Reform

Position: SUPPORT

The Maryland State Bar Association (MSBA) FJLSC **SUPPORTS House Bill 459 – Juvenile Justice Reform.**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

The Juvenile Justice Reform Council (JJRC) was charged with: (1) using a data-driven approach to develop a statewide framework of policies to invest in strategies to increase public safety and reduce recidivism of youth offenders; (2) researching best practices for the treatment of juveniles who are subject to the criminal and juvenile justice systems; and (3) identifying and making recommendations to limit or otherwise mitigate risk factors that contribute to juvenile contact with the criminal and juvenile justice systems. To that end, JJRC conducted 16 regional listening sessions across Maryland from January 2020 to March 2020 with public testimony from over 530 individuals. Public testimony identified several policy areas that shaped the JJRC agenda to include juvenile probation, minimum age of juvenile court jurisdiction, diversion, out-of-home placements, education, and youth charged as adults. During the 2021 legislative session the JJRC was extended for another year. JJRC released several recommendations incorporated in House Bill 459. The bill focuses on four large changes that will improve the juvenile justice system in Maryland.

The bill **establishes a minimum age of juvenile court jurisdiction** alleged to have committed a delinquent act. Maryland currently has no minimum age of juvenile court jurisdiction and in recent years children as young as 6 have been arrested and charged. This approach is out of line with most of the world, and many other states, which have set ages under which children cannot be charged with delinquent acts. In fiscal year 2019 the Department of Juvenile Services received 1,882 complaints for children under the age of 13.¹ In the past five years, Maryland has referred more than 8,600 pre-adolescent children to juvenile court. Thousands of very young children are being put into the system despite numerous scientific studies, court decision, and lived experience that demonstrate children are less culpable than adults for the same acts, and are less able to meaningfully participate in justice system processes, including working with their own attorneys. The largest study of young people's competency to stand trial found children under 13 years of age demonstrate significantly poorer understanding of trial matters, in addition to poorer reasoning and ability to recognize relevant information for a legal defense.² One-third of children under 13 function with impairments at a level comparable with mentally ill adults who have been found incompetent to stand trial.³ Data and research also show that bringing children into justice systems fails to protect public safety and is counterproductive to reducing recidivism rates. Establishing the minimum age of jurisdiction at 13 except for a select few enumerated exceptions brings Maryland in line with international norms.

The bill bans the use of juvenile jail and youth prison for low level offenses. 66% of young people sent to out-of-home placements are there for non-felony offenses.⁴ In Maryland, 1 in 3 children in placement are sent there for technical violations of probation⁵. Misdemeanor offenses accounted for over half of commitment admissions in 2019.⁶ In Maryland it can cost \$415,000/year to incarcerate a child.⁷

The bill amends State law to prohibit both detention and commitment of a child to DJS if the child is adjudicated delinquent for a misdemeanor or found in violation of community supervision for a technical violation of probation with limited exceptions including cases related to handgun offenses.

The bill limits the terms of probation. Currently, Maryland law does not provide for any statutory limits on the length of probation supervision, resulting in the possibility that a young

¹ DJS Data Resource Guide, FY2019, at 26. <https://djs.maryland.gov/Pages/Data-Resource-Guides.aspx>.

² Poythress, N., Monahan, J., Bonnie, R., Otto, R.K., & Hoge, S.K. (2002). *Adjudicative Competence: The MacArthur Studies*, New York: Kluwer/Plenum. https://macarthur.virginia.edu/adjudicate.html#N_1.

³ Lawrence Steinberg, *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology (2009).

⁴ Jeremy Arias, *Independent Report Implicates Staff in April Riot at Victor Cullen*, Frederick News Post, Dec. 18, 2018. www.fredericknewspost.com/news/crime_and_justice/independent-report-implicates-staff-in-pril-riot-at-victor-cullen/article_7e6c84b7-131e-562d-85bc-72b484421e5f.html

⁵ *Doors to Commitment: What Drives Juvenile Confinement in Maryland*, Annie E. Casey Foundation, 2016. [PDF]

⁶ JJRC Final Report at page 31.

⁷ *No Kids in Prison, Youth Incarceration in Maryland*, www.nokidsinprison.org/explore/maryland/section=race-interactive.

person may be supervised until the age when juvenile court jurisdiction must be terminated at age 21. Youth have better safety outcomes when the juvenile justice system helps them set rehabilitation goals and accomplish them, as opposed to merely surveilling them through long periods of probation supervision. Most youth grow out of lawbreaking without any intervention from the justice system. When consequences are far removed, in time, from the underlying offense young people do not connect the consequences to their actions and can perceive the system as unfair. This reinforces social disaffection and negative attitudes towards the law. It is therefore essential that youth probation be designed to ensure young people have a meaningful opportunity to participate and be successful in a finite, developmentally appropriate period of time. The bill addresses this problem by limiting the amount of time a young person can be placed on probation.

The bill makes it **easier to divert children out of the juvenile justice system**. One of the most important benefits of juvenile diversion is reducing recidivism by keeping low-risk youth away from the stigma of the juvenile justice system.⁸ The bill makes it easier for stakeholders to return a case for informal processing, eliminating the requirement that a complaining witness consent to diversion, and allowing more types of offenses to qualify for pre-court diversion.

For all these reasons, the Family and Juvenile Law Section Council of the MSBA urges the Committee to issue a favorable report on House Bill 459.

Should you have any questions, please contact Melanie Shapiro by email at mshapiro@mnadv.org.

⁸ Models for Change Juvenile Diversion Workgroup, Juvenile Diversion Guidebook at 11 (2011), <http://www.modelsforchange.net/publications/301>.